

FILED

Apr 28 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 Valerie M. Goo (SBN 187334)
2 vgoo@crowell.com
3 CROWELL & MORING LLP
4 515 South Flower St., 40th Floor
Los Angeles, CA 90071
Telephone: (213) 622-4750
Facsimile: (213) 622-2690

5 Molly A. Jones (SBN 301419)
6 mojones@crowell.com
7 CROWELL & MORING LLP
8 3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
10 Telephone: (415) 986-2800
11 Facsimile: (415) 986-2827

9 Virginia Wolk Marino (Illinois Bar No. 6297991; *pro hac vice to be submitted*)
vmarino@brinksgilson.com
10 Andrew J. Avsec (Illinois Bar No. 6292313; *pro hac vice to be submitted*)
aavsec@brinksgilson.com
11 BRINKS GILSON & LIONE
12 NBC Tower - Suite 3600
455 N. Cityfront Plaza Drive
Chicago, Illinois 60611
13 Telephone: (312) 321-4200
Facsimile: (312) 321-4299

Attorneys for Plaintiff EMERGENT BIOSOLUTIONS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EMERGENT BIOSOLUTIONS INC.

Case No. 5:20-cv-09452-NC

20 Plaintiff,

**STIPULATED REQUEST FOR ENTRY OF
CONSENT DECREE AND DISMISSAL;
ORDER**

21 v.

Judge: Hon. Nathanael M. Cousins
Complaint Filed: December 30, 2020

23 MUTUAL HOLISTIC, INC., JOHN
24 DOES I THROUGH 50, and JOHN DOE
ENTITIES I THROUGH 10,

Defendants.

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27

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CROWELL
& MORING LLP
ATTORNEYS AT LAW

STIPULATED REQUEST FOR ENTRY OF
CONSENT DECREE, ORDER, CASE NO.
5:20-CV-09452-NC

1 The following Consent Decree is entered by and between Plaintiff Emergent BioSolutions
 2 Inc. (“Emergent” or “Plaintiff”), Defendant Mutual Holistic, Inc. (“Mutual Holistic”), and Mutual
 3 Holistic’s officer Brad Moore (“Moore,” and collectively with Mutual Holistic, “Defendants”),
 4 having agreed upon a basis for settlement of the matters in dispute and having agreed upon the
 5 entry of this Consent Decree, it is hereby ordered, adjudged, and decreed as follows, and the
 6 Court makes the following findings of fact and conclusion of law:

7 1. This Court has jurisdiction over the subject matter of this action and over the
 8 parties hereto.

9 2. Venue properly lies in this District.

10 3. Emergent is a Delaware corporation with a principal place of business in
 11 Gaithersburg, Maryland.

12 4. Mutual Holistic is a non-profit mutual benefit corporation organized under the
 13 laws of California with a principal place of business in Sebastopol, California.

14 5. Moore is an individual with an address c/o Attorney Richard Freeman, 703 2nd
 15 Street, Suite 350, Santa Rosa, CA 95404.

16 6. Emergent has for many years used the trademarks and service marks EMERGENT
 17 and EMERGENT BIOSOLUTIONS, alone and in connection with other words and designs (the
 18 “EMERGENT Marks”), in connection with various goods and services, including
 19 biopharmaceutical related products and services.

20 7. In addition to its common law rights, Emergent is the owner of numerous federal
 21 trademark and service mark registrations and applications for the EMERGENT Marks, including
 22 but not limited to, Reg. Nos. 3,934,662; 4,020,248; 3,446,708; 5,129,287; 5,211,622; and App.
 23 Serial No. 88/884,324.

24 8. Mutual Holistic and Moore have promoted their herbal medicine products and
 25 services, including Respiratory Immune Syrups, under the name and mark EMERGENT
 26 BOTANICALS, without any authorization or consent from Emergent. The EMERGENT Marks
 27 are valid, subsisting and in full force and effect as to Defendants.

28

1 9. Defendants' use of the name and mark EMERGENT BOTANICALS in
2 connection with herbal medicine products and services is likely to cause confusion, or to cause
3 mistake, or to deceive the relevant public and the trade, such that the relevant public and the trade
4 are likely to believe that Defendants and their goods and services originate with or are related to
5 Emergent.

6 10. Defendants and any of their officers, agents, servants, employees, attorneys,
7 successors, related companies and assigns and their business or businesses, and all those in active
8 concert or participation with them, are hereby permanently enjoined from using the name and
9 mark EMERGENT BOTANICALS, any mark incorporating the term EMERGENT, or any other
10 mark confusingly similar to the EMERGENT Marks, in connection with the provision of goods
11 and services.

12 11. Each party shall bear its own attorney's fees and costs incurred in connection with
13 this action and all rights of appeal are waived.

14 12. This Consent Decree may be executed in any number of counterparts, all of which
15 together shall constitute one original document. Electronic copies of original signatures shall be
16 deemed to be originally executed counterparts of this Consent Decree.

17 13. Subject only to the express restrictions contained in this Consent
18 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the
19 benefit of and shall be binding upon Plaintiff and Defendants and their successors and assigns.

20 14. Plaintiff and Defendants have negotiated this Consent Decree, and agree that it
21 shall not be construed against the party preparing it, but shall be construed as if the parties jointly
22 prepared this [Proposed] Consent Decree and any uncertainty and ambiguity shall not be
23 interpreted against any one party.

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26 15. Each signatory of this Consent Decree signing on behalf of another,
27 warrants that he or she has the authority to sign on behalf of said person or entity and all persons
28

1 covered by this Consent Decree, and is fully authorized by the party whom he or she represents
2 to enter into the terms and conditions of this [Proposed] Consent Decree.

3 16. This Court shall retain jurisdiction over this matter for purposes of enforcing the
4 provisions of this Consent Decree, including over any claim that the Defendants have violated any
5 term of this Consent Decree.

6 17. Emergent and Defendants hereby respectfully request that this Court promptly
7 approve and enter this Consent Decree. If this [Consent Decree is not approved by the Court, it
8 shall be of no force and effect, and it may not be used in any proceeding for any purpose.

9
10 **IT IS SO AGREED AND STIPULATED.**

11 Dated: March 24, 2021

12 **EMERGENT BIOSOLUTIONS, INC.**

13 By: Jennifer Fox
14 Name: Jennifer Fox
15 Title: SVP and Deputy General Counsel

16 Electronically signed by: Jennifer Fox
Reason: I approve this document
Date: Apr 24, 2021 18:37 EDT

17 Dated: April 8, 2021

18 **MUTUAL HOLISTIC INC.**

19 By: Brad Moore
20 Name: Brad Moore
21 Title: President

22 Dated: April 8, 2021

23 **CROWELL & MORING LLP**

24 By: Molly A. Jones
25 Name: Molly A. Jones
26 Title: Valerie M. Goo

27 Attorneys for Plaintiff
28 **EMERGENT BIOSOLUTIONS INC.**

1 Dated: April 21, 2021

2 THE LAW OFFICES OF RICHARD
3 FREEMAN

4 By: /s/ Richard Freeman
5 Richard Freeman

6 Specially appearing on behalf of
7 Defendants
8 MUTUAL HOLISTIC, INC. and BRAD
9 MOORE

10 **FILER'S ATTESTATION**

11 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that the other above-
12 named signatories concur in this filing.

13 Dated: April 26 2021

14 By: /s/ Molly A. Jones
15 Molly A. Jones

16 **ORDER**

17 IT IS HEREBY ORDERED that the foregoing Consent Decree is fully
18 incorporated herein by reference and is entered as an Order of the Court.

19 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the Parties for the
20 sole purpose of enforcing compliance by the Plaintiff and Defendant with the terms of the Consent
21 Decree.

22 IT IS FURTHER ORDERED that upon approval and entry of this Consent Decree by the
23 Court, this Consent Decree shall constitute a final judgment between Emergent and the Defendants.
24 The above-captioned action against Defendants is dismissed with prejudice and all calendared dates
25 are hereby vacated.

26 **IT IS SO ORDERED.**

27 Dated: April 28, 2021

